

HOUSE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1304

AN ACT

To repeal sections 538.210 and 538.225, RSMo,  
and to enact in lieu thereof six new sections  
relating to claims for damages and the  
payment thereof with an emergency clause.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

Section A. Sections 538.210 and 538.225, RSMo, are repealed  
and six new sections enacted in lieu thereof, to be known as  
sections 537.072, 538.210, 538.211, 538.225, 538.226, and 1, to  
read as follows:

537.072. In all tort actions based upon improper health  
care, the parties shall make a good faith effort to engage in  
mediation, which shall be conducted by a trained mediator  
selected from a list approved by the circuit court. The parties  
shall advise the circuit court in writing that mediation take  
place. If mediation does not occur, the parties shall set forth  
in writing to the circuit court their good faith effort to  
conduct mediation.

538.210. 1. In any action against a health care provider

1 for damages for personal injury or death arising out of the  
2 rendering of or the failure to render health care services, no  
3 plaintiff shall recover more than three hundred fifty thousand  
4 dollars [per occurrence] for noneconomic damages from any one  
5 defendant as defendant is defined in subsection 2 of this  
6 section.

7 2. "Defendant" for purposes of sections 538.205 to 538.230  
8 shall be defined as:

9 (1) A hospital as defined in chapter 197, RSMo, and its  
10 employees and physician employees who are insured under the  
11 hospital's professional liability insurance policy or the  
12 hospital's self-insurance maintained for professional liability  
13 purposes;

14 (2) A physician, including his or her nonphysician  
15 employees who are insured under the physician's professional  
16 liability insurance or under the physician's self-insurance  
17 maintained for professional liability purposes;

18 (3) Any other health care provider having the legal  
19 capacity to sue and be sued and who is not included in  
20 subdivisions (1) and (2) of this subsection, including employees  
21 of any health care providers who are insured under the health  
22 care provider's professional liability insurance policy or  
23 self-insurance maintained for professional liability purposes.

24 3. In any action against a health care provider for damages  
25 for personal injury or death arising out of the rendering of or

1 the failure to render health care services, where the trier of  
2 fact is a jury, such jury shall not be instructed by the court  
3 with respect to the limitation on an award of noneconomic  
4 damages, nor shall counsel for any party or any person providing  
5 testimony during such proceeding in any way inform the jury or  
6 potential jurors of such limitation.

7 4. The limitation on awards for noneconomic damages  
8 provided for in this section shall be increased or decreased on  
9 an annual basis effective January first of each year in  
10 accordance with the Implicit Price Deflator for Personal  
11 Consumption Expenditures as published by the Bureau of Economic  
12 Analysis of the United States Department of Commerce. The  
13 current value of the limitation shall be calculated by the  
14 director of the department of insurance, who shall furnish that  
15 value to the secretary of state, who shall publish such value in  
16 the Missouri Register as soon after each January first as  
17 practicable, but it shall otherwise be exempt from the provisions  
18 of section 536.021, RSMo.

19 5. Any provision of law or court rule to the contrary  
20 notwithstanding, an award of punitive damages against a health  
21 care provider governed by the provisions of sections 538.205 to  
22 538.230 shall be made only upon a showing by a plaintiff that the  
23 health care provider demonstrated willful, wanton or malicious  
24 misconduct with respect to his or her actions which are found to  
25 have injured or caused or contributed to cause the damages

1 claimed in the petition.

2 538.211. 1. In all actions against a health care provider  
3 pursuant to this chapter, any health care defendant who has filed  
4 a timely motion to transfer venue may move for a hearing on the  
5 propriety of venue. All discovery shall be stayed except for  
6 discovery on the issue of venue raised in the motion. Within  
7 ninety days of the filing of the motion, the court shall set a  
8 hearing on the motion.

9 2. If after hearing the court determines that venue is  
10 improper, the court shall transfer venue to a county where venue  
11 is proper.

12 3. The court may award reasonable costs, expenses, and  
13 attorneys' fees associated with said motion to the prevailing  
14 party.

15 538.225. 1. In any action against a health care provider  
16 for damages for personal injury or death on account of the  
17 rendering of or failure to render health care services, the  
18 plaintiff or [his] the plaintiff's attorney shall file an  
19 affidavit with the court stating that he or she has obtained the  
20 written opinion of a legally qualified health care provider which  
21 states that the defendant health care provider failed to use such  
22 care as a reasonably prudent and careful health care provider  
23 would have under similar circumstances and that such failure to  
24 use such reasonable care directly caused or directly contributed  
25 to cause the damages claimed in the petition.

1           2. [The affidavit shall state the qualifications of such  
2 health care providers to offer such opinion.] The health care  
3 provider who offers such opinion shall have education, training,  
4 and experience in a like area of expertise, or logical extension  
5 of the field of expertise, as the defendant health care provider.  
6 In addition, the health care provider must be actively engaged in  
7 the practice of medicine or have retired from actively practicing  
8 within five years of the date of the written opinion. The  
9 written opinion is, upon motion of a party, subject to in-camera  
10 review by the court without counsel or the parties present to  
11 assure its compliance with this section.

12           3. A separate affidavit shall be filed for each defendant  
13 named in the petition.

14           4. Such affidavit shall be filed no later than ninety days  
15 after the filing of the petition unless the court, for good cause  
16 shown, orders that such time be extended.

17           5. If the plaintiff or [his] the plaintiff's attorney fails  
18 to file such affidavit [the court may] within the time required  
19 under subsection 4 of this section, the action as to that  
20 defendant shall be stayed and the court shall, upon motion of any  
21 party, dismiss the action against [such moving party] that  
22 defendant without prejudice.

23           538.226. 1. The portion of statements, writings, or  
24 benevolent gestures expressing sympathy or a general sense of  
25 benevolence relating to the pain, suffering, or death of a person

1 shall be inadmissible as evidence of an admission of liability in  
2 a civil action. A statement of fault, however, which is part of  
3 or in addition to any of the above shall be admissible under this  
4 section.

5 2. As used in this section, "benevolent gestures" means  
6 actions which convey a sense of compassion or commiseration  
7 emanating from humane impulses.

8 Section 1. 1. Any person may file a miscellaneous case for  
9 the purpose of securing copies of such person's health care  
10 records or the health care records of any other individual for  
11 whom such person is the guardian or attorney-in-fact, or is a  
12 potential claimant for a wrongful death.

13 2. A miscellaneous case shall be filed in the circuit in  
14 which any of the health care records sought to be obtained are  
15 located.

16 3. The petition shall be filed according to the following  
17 guidelines:

18 (1) The petition shall contain the following:

19 (a) The name of the individual who received the health care  
20 services or medical treatment;

21 (b) A brief summary of the health care services or medical  
22 treatment received;

23 (c) A brief summary of the outcome of the health care  
24 services or medical treatment; and

25 (d) The names of the health care providers from whom health

1 care records are being sought;

2 (2) The petition shall not contain allegations of  
3 negligence or demands, other than a general demand for access to  
4 health care records.

5 4. Within five business days of filing the miscellaneous  
6 case, the petitioner shall mail a copy of the petition by regular  
7 and certified mail to each health care provider listed in the  
8 petition. The petitioner shall certify to the court that the  
9 petition has been mailed as required.

10 5. After filing a miscellaneous case, the petitioner may  
11 request the health care records described in subsection 1 of this  
12 section by subpoena and, if necessary, subpoena the health care  
13 records custodian for a deposition for the sole purpose of  
14 securing copies of the health care records and verifying their  
15 authenticity. Refusal to provide the requested records may be  
16 the basis for the court to impose sanctions or orders of  
17 contempt.

18 6. Filing of a miscellaneous case petition shall toll the  
19 applicable statute of limitations for one hundred twenty days on  
20 any claim for injuries or death caused by professional negligence  
21 of a health care provider, but in no event shall the applicable  
22 statute of limitations be tolled under this section for more than  
23 one hundred twenty days.

24 7. The naming or listing of a health care provider as a  
25 person from whom records are requested shall not be considered

1 for any reporting purposes as a claim made against the health  
2 care provider.

3 8. A health care provider or any person or entity acting on  
4 behalf of a health care provider shall not charge more than is  
5 allowable under section 197.227, RSMo, for providing copies of  
6 health care records.

7 Section B. Because immediate action is necessary to make  
8 changes regarding claims for damages, section A of this act is  
9 deemed necessary for the immediate preservation of the public  
10 health, welfare, peace, and safety, and is hereby declared to be  
11 an emergency act within the meaning of the constitution, and  
12 section A of this act shall be in full force and effect upon its  
13 passage and approval.